

SEC Issues Notice of Intention to Grant Application for New Non-Transparent, Actively-Managed “Exchange-Traded Managed Fund”

On November 6, 2014, the SEC issued a [notice](#) of intention to grant an application for exemptive relief (the “Application”) under the Investment Company Act, as amended (the “1940 Act”), filed on behalf of Eaton Vance Management, Eaton Vance ETMF Trust, and Eaton Vance ETMF Trust II (collectively, the “Applicants”). If granted, the [Application](#) would permit the operation of a new type of exchange-traded fund, called an exchange-traded managed fund (“ETMF”), the shares of which would trade on an exchange at prices that are based on the net asset value (“NAV”) next determined at the end of each day (as described below).

In lieu of daily disclosure of portfolio holdings, the Application would allow ETMFs to trade on an exchange at a premium or discount to the to-be-determined end-of-day NAV (e.g., a trade at 10:00 am might be made at NAV+\$0.02, with the NAV, and thus the final price of the trade, not being determined until the end of the day) (the “NAV-based Trading”). An investor trading in an ETMF, unlike an investor in an existing ETF, would not know the final price of her trade at the time it is placed, but would know the level of premium/discount (which may be zero), and thereby see the execution cost of buying and selling shares.

The Applicants argued that the arbitrage mechanisms that operate to minimize premiums and discounts for an ETF would do the same for an ETMF. NAV-based Trading is intended to allow an ETMF to maintain incentives for arbitrage without requiring the ETMF to disclose portfolio holdings daily. Instead, an ETMF would be required to disclose its holdings quarterly with a 30-day lag, just as traditional mutual funds do. The Applicants further argued that because ETMF trades are based on NAV, market makers would no longer need full transparency to hedge their transactions in ETMF shares throughout the day.

The SEC notice highlights the novelty of granting relief for NAV-based Trading under Section 22(d) and Rule 22c-1 under the 1940 Act. The SEC preliminarily concluded that the Application addressed the concerns underlying Section 22(d) and Rule 22c-1:

- NAV-based Trading would not dilute the interests of ETMF shareholders because secondary market trading in shares would not involve the ETMF’s portfolio.
- NAV-based Trading would be directly tied to NAV and an ETMF’s trading prices would deviate from NAV only with respect to the execution costs of buying and selling ETMF shares (i.e., the premium/discount, which would be transparent).
- The Applicants agreed to follow conditions, which generally include that (i) the shares of ETMFs will trade on exchanges, (ii) neither the Trusts nor any ETMF will be advertised as an open-end investment company, a mutual fund, or an ETF; (iii) in any advertising material that describes the purchase or sale of creation units or refers to redeemability will also contain a statement to the effect that shares are not individually redeemable; and (iv) a public website will be maintained that contains certain financial information and disclosures about the ETMFs.

Except with respect to portfolio holdings disclosure, many other conditions for relief in the notice are largely similar to those of actively managed ETF orders approved by the SEC. Another difference from typical ETFs is that intraday indicative values would need to be published only every 15 minutes, rather than

the standard 15 seconds for ETFs. Additionally, while creation and redemption baskets are disclosed daily to allow purchases in kind, for an ETMF, unlike an ETF, such baskets would normally vary from current portfolio holdings.

The notice states that interested persons may request a hearing regarding the Application by December 1, 2014. Absent a request for a hearing that is granted by the SEC, the SEC intends to issue an order granting the Application.

For further information concerning this development, please contact your usual Ropes & Gray attorney or any member of the Ropes & Gray [Investment Management Group](#).

If you would like to learn more about the developments discussed in this Alert, please contact the Ropes & Gray attorney with whom you regularly work or any member of the Ropes & Gray Investment Management group listed below.

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